UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

VINCENT FERRANTI, individually and on behalf of all others similarly situated,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

Case No. 5:13-cv-03847-EJD

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

Re: Dkt. No. 45

Plaintiffs Vincent Ferranti ("Mr. Ferranti") and Carlos Martinho ("Mr. Martinho") (collectively, "Plaintiffs") filed the instant consumer class action suit against Defendant Hewlett-Packard Co. ("HP") alleging fraud-related claims for the sale of defective wireless printers.

Federal jurisdiction arises pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d). Presently before the Court is HP's Motion to Dismiss Plaintiffs' Second Amended Complaint ("SAC") pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6). See Dkt. No. 45. The court found this matter suitable for decision without oral argument pursuant to Civil Local Rule 7–1(b) and previously vacated the associated hearing date. Having carefully reviewed the parties' briefing, the court will grant HP's motion to dismiss for the reasons explained below.

I. BACKGROUND

Mr. Ferranti, a resident of Arizona, and Mr. Martinho, a resident of Pennsylvania, are former owners of a HP Officejet Pro 8500 and/or 8600 Wireless All-in-One printer (the "HP wireless printers"). SAC, Dkt. No. 44 at ¶¶ 1, 10-11. The wireless function allows a computer to wirelessly send print jobs to the printer. Id. at ¶ 2. Plaintiffs bring forth this action on behalf of all individuals who purchased or leased a HP wireless printer, alleging that the printers contain a

design and/or manufacturing defect because the transceivers are unable to maintain wireless communication with the computer, and are thus unable to print using the wireless function. Id. at ¶¶ 1, 4.

According to Plaintiffs, since April 2009, HP has been marketing and selling the HP wireless printers even while knowing of the alleged defect. Id. at ¶ 7. Customers have allegedly reported the defect directly to HP and have posted about the problem in HP's support forum and other product-review websites. Id. at ¶¶ 19, 23-32. Instead of repairing the HP wireless printers, however, Plaintiffs allege that HP falsely represented it could fix the problem by directing customers through troubleshooting procedures, which include uninstalling and reinstalling software, downloading and installing firmware updates or patches, restarting the computer, restarting the wireless router, restarting the printer, downloading and installing HP diagnostic tools to help identify and fix issues, inputting wireless router settings into the LCD panel on the printer, disabling "energy save mode" on printer, and changing the setup of the standard IP address. Id. at ¶¶ 8, 19-20. Plaintiffs allege that HP knew the troubleshooting procedures would not work because the wireless connectivity problem was caused by a hardware defect in the transceiver that could not be fixed without physically replacing or repairing the transceiver, and HP has allegedly failed to disclose the nature of the defect to its customers. Id. at ¶¶ 19, 39.

Plaintiffs further allege that the HP wireless printers come with a limited warranty, which covers HP wireless printers for one year from the date of purchase or from the date of the warranty replacement. Id. at ¶¶ 34-35. The warranty covers defects that arise as a result of normal use of the product, and provides that HP will repair or replace the product, or refund the purchase price. Id. at ¶¶ 34, 36. According to Plaintiffs, however, HP has refused to properly repair the HP wireless printers, to replace the defective HP wireless printer with a non-defective printer, or to refund the purchase price. Id. at ¶ 37.

Plaintiffs commenced the instant action in August 2013. See Dkt. No. 1. In November 2013, Plaintiffs filed their first amended class action complaint alleging fraud-related claims. See Dkt. No. 16. Thereafter, the case was reassigned to the undersigned judge, and HP filed its motion

to dismiss Plaintiffs' first amended complaint. See Dkt. Nos. 37, 39. This court granted HP's motion to dismiss ruling that Plaintiffs' Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 et seq., claims were barred by the statute of limitations, Mr. Ferranti's unfair competition law ("UCL"), Cal. Bus. & Prof. Code § 17200 et seq., claim was barred by the statute of limitations, Mr. Martinho's UCL claim was insufficiently pled, and Plaintiffs' breach-of-warranty claims were also insufficiently pled. See Order, Dkt. No. 43 at 7-11. Plaintiffs were granted leave to amend to address the deficiencies identified by this court. See id. at 11.

Plaintiffs subsequently filed their second amended class action complaint, which is the operative complaint. See SAC, Dkt. No. 44. Therein, Plaintiffs allege the following claims: (1) violation of the CLRA, (2) unlawful, unfair, and fraudulent business practices under California's UCL, (3) breach of express warranty under the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. § 2301 et seq., (4) breach of express warranty, (5) in the alternative, by Mr. Ferranti on behalf of the Arizona subclass, violation of the Arizona Consumer Fraud Act, A.R.S. § 44-1522, and (6) in the alternative, by Mr. Martinho on behalf of the New York subclass, violation of the New York General Business Law § 349. See id. Plaintiffs seek damages for financial losses associated with their purchase and/or lease of a defective HP wireless printer that include repair costs, shipping charges, loss of use, diminished value, and seek punitive damages and attorneys' fees. See id. at ¶¶ 130-31. HP filed the instant motion to dismiss in October 2014. See Mot., Dkt. No. 45. The matter has been fully briefed. See Opp'n, Dkt. No. 48; Reply, Dkt. No. 49.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead each claim with sufficient specificity to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotations omitted). A complaint which falls short of the Rule 8(a) standard may be dismissed if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). "Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th

Cir. 2008). Moreover, the factual allegations "must be enough to raise a right to relief above the speculative level" such that the claim "is plausible on its face." Twombly, 550 U.S. at 556-57.

Fraud requires more detail. "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). These allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985). To that end, the allegations must contain "an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." Swartz v. KPMG LLP, 476 F.3d 756, 764 (9th Cir. 2007). In other words, claims of fraudulent conduct must generally contain more specific facts than is necessary to support other causes of action.

The court must generally accept as true all "well-pleaded factual allegations." Ashcroft v. Iqbal, 556 U.S. 662, 664 (2009). The court must also construe the alleged facts in the light most favorable to the plaintiff, but "are not bound to accept as true a legal conclusion couched as a factual allegation." Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1988).

III. DISCUSSION

HP moves to dismiss Plaintiffs' claims on the grounds that each of the claims is barred by the statute of limitations and are insufficiently pled. The timeliness and sufficiency of the pleadings of each claim will be evaluated.

A. Consumers Legal Remedies Act

Ordinarily plaintiffs "need not plead on the subject of an anticipated affirmative defense." Rivera v. Peri & Sons Farms, Inc., 735 F.3d 892, 902 (9th Cir. 2013) (internal quotations omitted). "When an affirmative defense is obvious on the face of a complaint, however, a defendant can raise that defense in a motion to dismiss." Id. Thus, the district court can address the statute of limitations issues if they are apparent on the face of the complaint. Id.

In California, the statute of limitations begins to run at the moment a claim accrues. Aryeh v. Canon Bus. Sol., Inc., 55 Cal. 4th 1185, 1191 (2013). "This is the 'last element' accrual rule: ordinarily, the statute of limitations runs from the occurrence of the last element essential to the cause of action." Id. (internal quotations omitted). An exception to this rule is the discovery rule, which "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." Id. at 1192. A plaintiff discovers the cause of action "when he at least suspects that someone has done something wrong to him." Rosas v. BASF Corp., 236 Cal. App. 4th 1378, 1389 (2015). "The discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action," thus "plaintiffs are charged with presumptive knowledge of an injury if they have information of circumstances to put them on inquiry or if they have the opportunity to obtain knowledge from sources open to their investigation." Id. (emphasis omitted). To invoke the discovery rule, "the plaintiff must specifically plead facts which show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence." Yumul v. Smart Balance, Inc., 733 F. Supp. 2d 1134, 1141 (C.D. Cal. 2010).

While HP contends that Plaintiffs' CLRA claims are time-barred, Plaintiffs argue that the claims are timely under the discovery rule. Mot. at 6; Opp'n at 13-15. The CLRA prohibits certain "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer." Cal. Civ. Code § 1770(a). The statute of limitations for a CLRA claim is "three years from the date of the commission of such method, act, or practice." Id. at § 1783.

As to Mr. Ferranti's claim, he alleges that he obtained a HP wireless printer as a warranty replacement on March 25, 2009. SAC at ¶ 40. He soon noticed that the printer's wireless function did not work, thus he exchanged the printer for another HP wireless printer of the same model on September 27, 2009. Id. at ¶¶ 41-42. The second printer was also defective. Id. at ¶ 42. Between April 2010 and May 2013, Mr. Ferranti alleges that he contacted HP via its tech support department to request a repair or replacement, but each time HP only offered troubleshooting

assistance while allegedly knowing that it would not fix the problem. Id. at ¶¶ 45-46. Mr. Ferranti further alleges that it was not until August 20, 2010 when he discovered the problem was caused by a hardware defect that could not be resolved with troubleshooting procedures. Id. at ¶¶ 50-52.

Taking into account the discovery rule, the earliest the limitations period could have begun to run was March 2009 when Mr. Ferranti realized that his warranty replacement printer was defective, and the latest that it could have begun to run is September 2009 when he realized that the second printer suffered from the same alleged defect. Noting that both printers[1] suffered from the same alleged defect and each time Mr. Ferranti called HP's customer service he received the same troubleshooting response, this is sufficient to constitute inquiry notice that there was something wrong. Moreover, in their complaint, Plaintiffs include eleven pages of comments posted on product-review websites dating as early as April 2009 in which consumers complain about the dysfunctional wireless feature and the lack of resolution offered by HP, serving as a further basis for inquiry notice. See SAC at ¶¶ 24-32; see also Clemens v. DaimlerChrysler Corp., 534 F.3d 1017, 1024-25 (9th Cir. 2008) (finding that performing research on the internet, learning the defect was a common problem, and requesting repair discounts was sufficient inquiry notice). Collectively, the facts alleged show that the latest Mr. Ferranti could have discovered the existence of a CLRA claim is September 2009. Since this action was filed in August 2013 and the CLRA statute of limitations is three years, Mr. Ferranti's CLRA claim is untimely.

As to Mr. Martinho's claim, he alleges that he purchased a HP wireless printer on December 22, 2009. Id. at ¶ 55. He alleges that as soon as he installed the printer, he realized that he could not establish a useable wireless connection, thus he exchanged the printer for another HP wireless printer of the same model on December 28, 2009. Id. at ¶¶ 55-56. After only one day of using the printer, he allegedly realized that the second printer was also defective. Id. at ¶ 56. Mr. Martinho further alleges that beginning in December 23, 2009, he called HP customer support on

[1] Since the printer obtained in March 2009 was a warranty replacement printer, it is presumed that Mr. Ferranti had problems with at least three different printers. It is unknown, however, whether the original printer suffered from the same alleged defect.

various occasions and was instructed to install software patches, none of which fixed the defect. Id. at ¶ 57. Mr. Martinho thereafter purchased a third HP wireless printer on January 19, 2010, and after using it for one week, he realized that printer was also defective. Id. at ¶ 58. Mr. Martinho alleges that it was not until November 8, 2010 when he discovered the problem was a hardware defect that could not be resolved with troubleshooting procedures. Id. at ¶¶ 62-64.

Taking into account the discovery rule, the earliest the limitations period could have begun to run as to Mr. Martinho was December 2009, and the latest was January 2010, upon discovering that a third printer had the same alleged defect. Noting that three separate HP wireless printers had the same alleged defect and that HP's customer support was unable to resolve the problem constitutes sufficient inquiry notice that there was something wrong. These alleged facts coupled with the comments posted on product-review websites further support the trigger of inquiry notice as to Mr. Martinho. See Clemens, 534 F.3d at 1024-25. Therefore, collectively, these allegations show that the latest Mr. Martinho could have discovered the existence of a CLRA claim is January 2010. Since this action was filed in August 2013 and the CLRA statute of limitations is three years, Mr. Martinho's CLRA claim is also untimely.

In their opposition brief, Plaintiffs appear to argue that the limitations period should begin to run when they discovered there was fraud and learned that HP was actively concealing the alleged defect, not when they discovered that the HP wireless printer malfunctioned. Opp'n at 14. This argument, however, is unpersuasive. First, under the discovery rule, the three-year limitations period begins to run when Plaintiffs have inquiry notice of the CLRA claim and suspects wrongdoing. Such inquiry notice is derived from Plaintiffs' possession of multiple HP wireless printers with the same alleged defect, Plaintiffs repeatedly receiving the same troubleshooting advice from HP customer support, and the various postings in product-review websites regarding the problems encountered with the wireless function of the HP wireless printers. As such, Plaintiffs are charged with presumptive knowledge of injury and, at that point, the limitations period began to run. See Philips v. Ford Motor Co., No. 14-cv-02989-LHK, 2015 WL 4111448, at *8 (N.D. Cal. July 7, 2015) ("Only when the defect manifested in their

vehicles . . . were California Plaintiffs charged with a duty to investigate and presumptive knowledge of the defect. The statute of limitations began to run at that point.") (internal quotations omitted). Second, even if the discovery rule delayed accrual of the limitations period until Plaintiffs learned of the alleged fraud, Plaintiffs fail to allege when and how they learned HP was committing fraud. Instead, each Plaintiff offers an arbitrary date within the three-year statute of limitations—August 20, 2010 and November 8, 2010—and merely allege they discovered the problem was caused by a hardware defect that could not be resolved with troubleshooting procedures.

In sum, Plaintiffs' CLRA claims are time-barred. Plaintiffs have not remedied the deficiencies addressed in this court's previous ruling. Providing leave to further amend under these circumstances would be futile. As such, Plaintiffs' CLRA claims are dismissed with prejudice.

B. Unfair Competition Law

i. Timeliness of the Claim

The UCL prohibits unfair competition that includes "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200. The statute of limitations for an unfair competition claim is "four years after the cause of action accrued," and it can be tolled under the discovery rule. Id. at § 17208; Aryeh, 55 Cal. 4th at 1195-96.

Only the timeliness of Mr. Ferranti's UCL claim is at issue. See Mot. at 6. Given the discussion above regarding Mr. Ferranti's allegations, and construing the alleged facts in the light most favorable to Mr. Ferranti, the latest the limitations period could have begun to run was September 2009 when he realized that his second printer was allegedly defective. See SAC at ¶ 42. This action was filed within the four-year statute of limitations, thus Mr. Ferranti has alleged facts that render this claim timely.

ii. Sufficiency of the Pleadings

The court will now determine whether Plaintiffs adequately pled their claims. The UCL

"provides an equitable means through which both public prosecutors and private individuals can bring suit to prevent unfair business practices and restore money or property to victims of these practices." Yanting Zhang v. Super. Ct., 57 Cal. 4th 364, 370 (2013). Written in the disjunctive, the UCL "establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent." Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999). The "unlawful" prong of the UCL "borrows violations of other laws and treats them as independently actionable." Daugherty v. Am. Honda Motor Co., Inc., 144 Cal. App. 4th 824, 837 (2006). "The standard for determining what business acts or practices are 'unfair' in consumer actions under the UCL is currently unsettled." Yanting Zhang, 57 Cal. 4th at 380 n.9. Some courts have held that the "unfair" prong requires alleging a practice that "offends an established public policy or . . . is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers," and the policy must be "tethered to specific constitutional, statutory or regulatory provision." Bardin v. Daimlerchrysler Corp., 136 Cal. App. 4th 1255, 1263 (2006) (internal citations omitted). Other courts have held that the court must apply a balancing test that "weigh[s] the utility of the defendant's conduct against the gravity of the harm to the alleged victim." Schnall v. Hertz Corp., 78 Cal. App. 4th 1144, 1167 (2000). Lastly, the "fraudulent" prong of the UCL requires a showing that "members of the public are likely to be deceived." Id. at 838.

When the "UCL claim rests on allegations of fraud, it must satisfy Rule 9(b)." Block v. eBay, Inc., 747 F.3d 1135, 1140 (9th Cir. 2014). Thus, a plaintiff must allege with specificity that purported misrepresentations: (1) were relied on by Plaintiff; (2) were material; (3) influenced Plaintiff's decision to purchase eBay's product; and (4) were likely to deceive members of the public. In re Apple In-App Purchase Litig., 855 F. Supp. 2d 1030, 1041 (N.D. Cal. 2012).

In their SAC, Plaintiffs allege that HP knew the wireless printers were defectively designed and/or manufactured, but nonetheless marketed and sold the printers while failing to disclose and actively conceal the defect. SAC at ¶ 89. Based on these facts, Plaintiffs allege a violation of the UCL under the unlawful, unfair, and fraudulent prongs. Id. at ¶ 94. HP moves to dismiss the UCL claim on three grounds: (1) Plaintiffs do not allege facts establishing that HP had

knowledge of the purported defect at the time of sale; (2) Plaintiffs fail to allege facts establishing that HP had a duty to disclose any alleged defects; and (3) Mr. Ferranti has not participated in a sales transaction which could give rise to a UCL claim. Each argument will be addressed in turn.

a. *Knowledge of the Purported Defect at the Time of Sale*

HP argues that Plaintiffs' allegations concerning customer postings on product-review websites, and customers returning or exchanging the HP wireless printers, are not sufficient to establish that HP knew of the purported defect at the time of sale. Mot. at 11. In opposition, Plaintiffs argue that the Rule 9(b) heightened pleading standard does not require allegations concerning HP's state of mind, thus it is not necessary to specifically plead HP's knowledge. Opp'n at 11. Moreover, Plaintiffs argue that their allegations raise an inference of HP's knowledge because immediately after the printers went on sale, customers repeatedly complained to HP's customer support about the printers' inability to establish a reliable wireless connection. Id. Additionally, Plaintiffs contend that an HP customer service representative told Mr. Ferranti that the malfunction was caused by a hardware defect, which raises an inference that HP knew about the defect. Id. at 12.

In a UCL claim, the plaintiff must allege that the manufacturer knew of the purported defect at the time of sale. Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1145 (9th Cir. 2012). A successful pleading will contain allegations that include the specific defect and any tests or information that could have alerted the manufacturer of the defect, such as consumer complaints posted on the manufacturer's customer support website. Id. at 1147. To the extent a plaintiff relies on consumer complaints posted on the website, the posts must be dated to indicate that the manufacturer was aware of the defect at the time the product was sold to the plaintiff. Id. at 1147-48. Consumer complaints alone, however, cannot adequately support an inference that the manufacturer knew of the defect. Id. at 1147.

Here, Plaintiffs allege that the HP OfficeJet Pro 8500 Wireless was released in March 2009. SAC at ¶ 21. Plaintiffs include verbatim language of customer complaints and reviews posted on HP Support Forum, CNET, Amazon, and Consumer Reports dating from April 19, 2009

to March 24, 2011. Id. at ¶¶ 24-29. According to Plaintiffs, Mr. Ferranti received his first printer as a warranty replacement on March 25, 2009, and received his second printer as an exchange on September 27, 2009; Mr. Martinho purchased his first printer on December 22, 2009, and received his second printer as an exchange on December 28, 2009. Id. at ¶¶ 40, 42, 55-56. Since Mr. Ferranti obtained his first printer before the first consumer post of April 2009, it cannot be said that HP knew of the defect at the time Mr. Ferranti obtained his printer. As to Mr. Ferranti's second printer and Mr. Martinho's two printers, only a few consumer posts alleged by Plaintiffs were posted before they obtained their printers. Under Wilson v. Hewlett-Packard, this is not sufficient to impute HP with knowledge of the defect at the time of sale.

Plaintiffs also allege that the HP OfficeJet Pro 8600 Wireless was released in November 2011, and they include verbatim language of customer complaints and reviews posted on CNET and Amazon. Id. at ¶¶ 30-32. These posts are dated between December 16, 2011 and June 18, 2013. Id. at ¶¶ 31-32. According to Plaintiffs, Mr. Martinho purchased his printer on January 19, 2010. Id. at ¶ 58. Since it is unclear how Mr. Martinho was able to purchase his printer 22 months before it was released and before the first consumer post, then it cannot be said that HP knew of the defect at the time Mr. Martinho's purchased his printer.

Moreover, Plaintiffs allege that in a phone conversation between Mr. Ferranti and an HP tech support agent, the agent admitted that the malfunctions were caused by a hardware defect on the radio button's wireless functionality, and thus the defect would continue to be a problem and would get worse. Id. at ¶ 47. While Plaintiffs do not allege when this phone conversation took place, it is presumed that it occurred after Mr. Ferranti obtained his HP wireless printer. Thus, this is not sufficient to impute HP with knowledge of the defect at the time Mr. Ferranti obtained his printer. See Kowalsky v. Hewlett-Packard Co., 771 F. Supp. 2d 1156, 1162 (N.D. Cal. 2011) (finding that HP cannot be held liable under the fraudulent prong because there were insufficient allegations "to suggest that HP had knowledge of the basic fact at the time that it marketed, and Plaintiff purchased, the printer"); Wilson, 668 F.3d at 1146-47 (noting that a successful pleading includes allegations that there were consumer complaints concerning the defect months before the

plaintiff purchased the product, indicating that the manufacturer was aware of the defect at the time of sale).

Considering the allegations independently and collectively, they are not sufficient to support an inference that HP knew of the purported defect at the time of sale.

b. *Duty to Disclose Alleged Defect*

HP argues that Plaintiffs failed to allege facts establishing that HP had a duty to disclose any purported defect since there are no allegations demonstrating that the wireless connectivity issues were contrary to any representations made by HP or that they posed any threat to Plaintiffs' safety. Mot. at 12-13. In opposition, Plaintiffs argue that HP's duty to disclose arises from their exclusive knowledge of the defect, a material fact that was not known to Plaintiffs. Opp'n at 9. Plaintiffs argue that while the customer posts informed Plaintiffs the wireless function was problematic, only HP knew that the problem could not be fixed and would only get worse despite customers' attempt to fix the problem. Id. at 10.

"California courts have generally rejected a broad obligation to disclose," and have found that "a manufacturer's duty to consumers is limited to its warranty obligations absent either an affirmative misrepresentation or a safety issue." Wilson, 668 F.3d at 1141. To the extent Plaintiffs contend that HP's exclusive knowledge of the defect was a material fact, "for the omission to be material, the failure must still pose safety concerns." Id. at 1142.

Here, Plaintiffs allege that HP had exclusive knowledge of the defect, it made partial disclosures about the quality of the printers without revealing the defective nature of the printers, it actively concealed the defective nature of the printers, and it knew that Plaintiffs could not reasonably have expected to learn about or discover the defect. SAC at ¶ 91. These allegations, however, are insufficient to impose a duty of disclosure upon HP. Plaintiffs learned of the purported defect shortly after obtaining the printers, and realized that the problem could not be resolved even after going through the troubleshooting procedures. Since Plaintiffs knew of the defect, it cannot be said that HP had exclusive knowledge of the defect. While Plaintiffs may not have known that the source of the defect was a hardware issue, they nonetheless knew that the HP

wireless printers had a defect that could not be fixed. Moreover, the purported defect does not pose a safety concern to consumers, and Plaintiffs do not allege as such. Therefore, HP did not have a duty to disclose.

c. *Mr. Ferranti's Participation in a Sales Transaction*

Lastly, HP argues that Mr. Ferranti has not participated in a sales transaction giving rise to a UCL claim since he received his first printer as a warranty replacement. Mot. at 14. HP argues that, consequently, Mr. Ferranti fails to allege he has lost money as a result of the sales transaction, and that there was a particular promise attached to the sale of the printer. Id. Plaintiffs do not offer an argument in response, other than to state in a footnote that Mr. Ferranti's original printer was his legal property, which he exchanged for the purportedly defective printer, thus the acquisition of the purportedly defective printer was a "sale." Opp'n at 6 n.1.

Since Plaintiffs fail to make a legal argument in support of their position, this court presumes that Plaintiffs concede this point. To the extent Plaintiffs' footnote was meant to dispute this argument, it is unsuccessful as Plaintiffs do not plead the original printer was the product of a sales transaction. Under California Business and Professions Code § 17204, a "person who has suffered injury in fact and has lost money or property as a result of the unfair competition" can pursue an action for relief. There are several ways in which economic injury from unfair competition may be shown:

> A plaintiff may (1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have; (2) have a present or future property interest diminished; (3) be deprived of money or property to which he or she has a cognizable claim; or (4) be required to enter into a transaction, costing money or property, that would otherwise have been unnecessary.

Kwikset Corp. v. Super. Ct., 51 Cal. 4th 310, 323 (2011).

Here, Plaintiffs allege that Mr. Ferranti's first HP wireless printer was a warranty replacement for a different HP printer. SAC at ¶ 40. However, Plaintiffs provide no details concerning the original HP wireless printer. As such, Plaintiffs fail to plead that Mr. Ferranti has, in some way, lost money or property as a result of HP's alleged unfair competition.

In sum, Plaintiffs have not sufficiently pled a UCL claim. Plaintiffs have not provided sufficient allegations demonstrating that HP had knowledge of the defect at the time Plaintiffs obtained their HP wireless printers, that HP had a duty to disclose the alleged defect, or that Mr. Ferranti participated in a sales transaction. Accordingly, HP's motion to dismiss Plaintiffs' UCL claim is granted.[2]

C. Breach of Express Warranty

i. Timeliness of the Claim

The statute of limitations for a breach-of-express-warranty claim is "four years after the cause of action has accrued." Cal. Com. Code § 2725(1); see Cardinal Health 301, Inc. v. Tyco Elec. Corp., 169 Cal. App. 4th 116, 134-35 (2008) (noting that the statute of limitations for a breach-of-express-warranty claim is governed by § 2725, which provides the statute of limitations for a breach of contract for sale). Here, only the timeliness of Mr. Ferranti's breach-of-express-warranty claim is at issue. See Mot. at 6. Given the discussion above regarding a four-year statute of limitations, Mr. Ferranti has alleged a timely claim.

ii. Sufficiency of the Pleadings

HP moves to dismiss this claim on the basis that a breach of warranty is insufficiently pled. Mot. at 16. In response, Plaintiffs argue that HP breached its warranty when it failed to repair the HP wireless printers and knew that the software patches it offered would not repair the printers. Opp'n at 5. Plaintiffs further ague that HP failed to replace the printers or refund the purchase price, and even if HP had replaced the printers, the replacement would not have remedied the alleged defect because all HP wireless printers had the same defective wireless transceiver. Id. at 5-6.

"A warranty is a contractual promise from the seller that the goods conform to the promise." Daugherty, 144 Cal. App. 4th at 830. "If they do not, the buyer is entitled to recover the difference between the value of the goods accepted by the buyer and the value of the goods

[2] To the extent certain prongs of the UCL claim are attached to the time-barred CLRA claim, such as the "unlawful" prong, those must be dismissed with prejudice.

had they been as warranted." Id.

Here, the warranty at issue provides HP wireless printers with a one-year limited warranty. See Exh. A, Decl. of Aaron H. Bloom ("Bloom Decl."), Dkt. No. 45-1 at 3.[3] It "warrants to the end-user customer that [HP printers] be free from defects in materials and workmanship for [one year], which duration begins on the date of purchase by the customer." Id. The warranty "covers only those defects that arise as a result of normal use of the product . . . ." Id. The warranty also provides:

> 5. If HP receives, during the applicable warranty period, notice of a defect in any product which is covered by HP's warranty, HP shall either repair or replace the product, at HP's option.
>
> 6. If HP is unable to repair or replace, as applicable, a defective product which is covered by HP's warranty, HP shall, within a reasonable time after being notified of the defect, refund the purchase price for the product.
>
> 7. HP shall have no obligation to repair, replace, or refund until the customer returns the defective product to HP.

Id.

Plaintiffs allege that Mr. Ferranti obtained his first HP wireless printer as a warranty replacement, and obtained his second as a product exchange at a retail store; they also allege that Mr. Martinho purchased his first HP wireless printer, exchanged the printer at a retail store, and purchased another HP wireless printer. SAC at ¶¶ 40, 42, 56, 58. Plaintiffs allege that when each of their printers failed to maintain a wireless connection, they called HP's customer support and performed the suggested troubleshooting procedures even though HP knew it would not fix the wireless defect. Id. at ¶¶ 41-42, 57-58. During one of these phone calls to HP, Mr. Ferranti was allegedly offered a discount off a new printer, but was not offered a full refund. Id. at ¶ 47. Plaintiffs allege that on multiple occasions, they each requested that HP either refund the purchase price or replace the printer with a functioning wireless transceiver. Id. at ¶¶ 48, 65.

[3] A copy of HP's limited warranty was provided by HP's counsel as an exhibit. While Plaintiffs did not provide a copy of the warranty with their complaint, it appears that Plaintiffs do not dispute that the warranty provided by HP is correct. See Opp'n at 6 (referencing the exhibit).

Plaintiffs have not sufficiently pled a claim for breach of warranty. While Plaintiffs allege that HP's attempt to repair the printers through troubleshooting was ineffective, they also allege that they were able to exchange their printers and at least Mr. Ferranti was offered a discount off a new printer. Plaintiffs' general allegations that they requested a refund or replacement is too conclusory as there are no factual allegations of when this occurred or that their requests were denied. See Love, 915 F.2d at 1245 (noting that courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). Because Plaintiffs fail to clearly allege how HP breached its one-year warranty, HP's motion to dismiss this claim is granted.

D. Magnuson-Moss Warranty Act

i. Timeliness of the Claim

The MMWA allows "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter . . . [to] bring suit for damages and other legal and equitable relief." Rooney v. Sierra Pac. Windows, 566 Fed. Appx. 573, 576 (9th Cir. 2014) (quoting 15 U.S.C. § 2310(d)(1)). Since the MMWA does not contain a statute of limitations, the court will look to the most analogous state statute of limitations. Chuck v. Hewlett Packard Co., 455 F.3d 1026, 1031 (9th Cir. 2006). As such, the most analogous state statute of limitations is that governing the breach-of-warranty claim under California Commercial Code § 2725, which is four years.

Here, only the timeliness of Mr. Ferranti's MMWA claim is at issue. See Mot. at 6. The analysis above regarding Mr. Ferranti's breach-of-express-warranty claim applies here, thus the MMWA claim will not be dismissed as untimely.

ii. Sufficiency of the Pleadings

The MMWA "provides a federal private cause of action for a warrantor's failure to comply with the terms of a written warranty." Milicevic v. Fletcher Jones Imp., Ltd., 402 F.3d 912, 917 (9th Cir. 2005). Since the MMWA requires a breach of warranty under state law, the MMWA claim can properly be dismissed if the plaintiff fails to state a claim for breach of an express or implied warranty. Troup v. Toyota Motor Corp., 545 Fed. Appx. 668, 669 (9th Cir. 2013).

In this instance, the court found above that Plaintiffs failed to sufficiently plead a claim for breach of express warranty. Thus, it follows that Plaintiffs have failed to plead a MMWA claim. HP's motion to dismiss this claim is granted.

E. Plaintiffs' Alternatively Pleaded Arizona and New York Law Claims

In the alternative, Mr. Ferranti asserts a violation of the Arizona Consumer Fraud Act, A.R.S. § 44-1522, on behalf of class members who purchased or leased HP wireless printers in Arizona (the "Arizona Subclass"); and Mr. Martinho asserts a violation of the New York General Business Law § 349, on behalf of class members who purchased or leased HP wireless printers in New York (the "New York Subclass"). Both of these statutes are consumer protection statutes.

HP moves to dismiss the Arizona law claim on the basis that it is time-barred, and Plaintiffs failed to plead any facts demonstrating HP's duty to disclose and knowledge of the alleged defect at the time of sale. Mot. at 18-19. HP also moves to dismiss the New York law claim on the basis that it is time-barred, and Plaintiffs failed to sufficiently plead both that HP made a representation which contradicted the omission, and that HP had knowledge of the wireless transceiver defect at the time of sale. Id. In opposition, Plaintiffs appear to offer the same arguments as with the California consumer fraud claims. Opp'n at 15 n.4; see supra § III(A), (B).

This court finds that Plaintiffs' alternatively pleaded Arizona and New York law claims are time-barred. Under Arizona law, the statute of limitations for a consumer fraud claim under A.R.S. § 44-1522 is one year. Alaface v. Nat'l Inv. Co., 181 Ariz. 586, 591 (1994). As stated above, the latest Mr. Ferranti's statute of limitations could have begun to run was September 2009. Since this action was filed in August 2013, Mr. Ferranti's Arizona law claim is untimely. Similarly, under New York law, the statute of limitations for an unlawful practice claim under New York General Business Law § 349 is three years. Statler v. Dell, Inc., 775 F. Supp. 2d 474, 484 (E.D.N.Y. 2011). As stated above, the latest Mr. Martinho's statute of limitations could have begun to run was January 2010. Since this action was filed after the expiration of the limitations period, Mr. Martinho's New York law claim is also untimely. Accordingly, Plaintiffs'

alternatively pleaded Arizona and New York law claims are dismissed with prejudice.

IV. CONCLUSION

Based on the foregoing, HP's Motion to Dismiss is GRANTED. Plaintiffs' CLRA claim, Arizona law claim, and New York law claim are dismissed without leave to amend. Plaintiffs' remaining claims are dismissed with leave to amend, and can file their third amended complaint addressing the deficiencies stated herein no later than 15 days from the date of this order.

IT IS SO ORDERED.

Dated: September 10, 2015

EDWARD J. DAVILA
United States District Judge